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90-371

NO. 90- _____

Supreme Court, U.S.
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JOSEPH F. SPANOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

LOIS MORALES,

Petitioner,

vs.

KANSAS STATE UNIVERSITY,
KANSAS BOARD OF REGENTS, and
JON WEFALD, PRESIDENT OF KANSAS
STATE UNIVERSITY,

Respondents.

ON WRIT OF CERTIORARI TO THE
TENTH CIRCUIT COURT OF APPEALS

BRIEF OF RESPONDENTS
IN OPPOSITION

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QUESTION PRESENTED

Respondents concur with
petitioner's statement of the question
presented.

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CITATIONS OF OPINIONS AND
JUDGMENTS IN THE COURTS BELOW

Lois Morales v. Kansas State University, Case No. 88-4208-R (D. Kan., filed October 6, 1989).

Lois Morales v. Kansas State University, 727 F.Supp. 1389 (1989).

Lois Morales v. Kansas State University, Case No. 90-3003 (D. Kan., filed May 30, 1990), see Appendix A, Petition.

STATUTES INVOLVED

The only statute involved in this case is 28 U.S.C. 1738 as set out in the petition. Other statutes set out in the petition are not involved.

STATEMENT OF THE CASE

The Title VII claim in this case is limited to retaliation. Petitioner did not claim sexual discrimination or harassment.

Respondents concur with the

remainder of petitioner's statement of the case.

SUMMARY OF ARGUMENT

Kremer v. Chemical Construction Corporation, 456 U.S. 461 (1982) requires that in Title VII actions, 28 U.S.C.S. §1738 requires federal courts to give preclusive effect to state court judgments. There is no basis for denying finality to state court judgments arising out of state administrative proceedings from agencies whose roles are not limited exclusively to civil rights enforced. A denial of finality of such judgment is contrary to the entire body of federal court precedent.

State court decisions did

not require petitioner to raise her retaliation claim in state court or deny her access to federal court to pursue her Title VII claim. However, her decision to litigate her claim in state court prevents her relitigating that claim in federal court.

REASONS FOR DENYING THE WRIT

A. STATE COURT DECISIONS REVIEWING DETERMINATIONS OF ADMINISTRATIVE AGENCIES OTHER THAN CIVIL RIGHTS AGENCIES HAVE PRECLUSIVE EFFECT.

Kremer v. Chemical Construction Corporation, 456 U.S. 461 (1982) determined that in Title VII actions, 28 U.S.C.S. §1738 requires federal courts to give preclusive effect to state court judgments.

Plaintiff argues that only a state court decision pursuant to a review of an order of the Kansas Civil

Rights Commission should be accorded preclusive effect under the authority of Kremer v. Chemical Construction Corporation, supra. However, a review of cases in the federal courts reveals that no such restriction on the Kremer ruling exists. Preclusion has been dictated by Kremer as a result of state court decisions arising out of the review of decisions from a variety of agencies. See e.g., Leong v. Hilton Hotels Corp., 698 F.Supp. 1496, 48 F.E.P. Cases 535 (D. Hawaii, 1988) (unemployment compensation decision); Carlisle v. Phoenix City Board of Education, 849 F.2d 1376, 47 F.E.P. Cases 616 (11th Cir. 1988) (teacher tenure proceeding); Rider v. Commonwealth of Pennsylvania, 850 F.2d 982, 47 F.E.P. Cases 198 (3rd Cir.

1988) (arbitration decision); Levitt v. University of Texas at El Paso, 47 F.2d 221, 47 F.E.P. Cases 90 (3rd Cir. 1988) (university tribunal); Garrett v. City and County of San Francisco, 818 F.2d 1515, 44 F.E.P. Cases 865 (9th Cir. 1987) (Fire Commission); Cooper v. City of North Olmstead, 795 F.2d 1265, 41 F.E.P. Cases 425 (6th Cir. 1986) (unemployment compensation decision); Hill v. Coca Cola Bottling Company of New York, 786 F.2d 550, 40 F.E.P. Cases 639 (2nd Cir. 1986) (unemployment compensation proceeding); Hirst v. State of California, 770 F.2d 776, 38 F.E.P. Cases 1496 (9th Cir. 1985) (State Personnel Board); Burney v. Polk Community College, 728 F.2d 1374, 34 F.E.P. Cases 727 (11th Cir. 1984)

Community College Board of Trustees). In all of the cases cited, preclusive effect was given to state court holdings reviewing administrative decisions. None of these agencies is restricted its role to enforcement of state civil rights statutes. Burney v. Polk Community College, at 728 F.2d at 1377, 34 F.E.P. Cases 730-31, responds directly to the objection to preclusion raised by the petitioner. After citing Kremer at some length, the Burney court goes on to state that "the destructive effect of stripping state court judgments of finality is equally applicable to state court judgments affirming that a claim of employment discrimination is unproven made by a state administrative agency other than that expressly authorized

to determine employment discrimination claims." Burney at 731. Clearly, plaintiff's rationale for reducing the full faith and credit requirement of §1738 as dictated in Kremer is contrary to existing federal court precedent.

B. KANSAS DECISIONS DO NOT LIMIT PLAINTIFF'S ACTS AS TO FEDERAL COURT.

In exercising her rights under Title VII, plaintiff also argues that Kansas cases somehow barred or limited her access to federal court in exercise of her right to litigate her retaliation claim under Title VII. She cites Neunzig and Kansas Commission on Civil Rights v. Seaman U.S.D. 345, 239 Kan. 654 (1986) and Mattox v. Department of Transportation, 12 Kan.App.2d 403

(1987). Neither Neunzig nor Mattox have any bearing on the issues involved in this case. Plaintiff filed an appeal of her dismissal from her civil service position with the State Civil Service Board. Before the Board she claimed that she was being dismissed in retaliation for filing claims of sexual harassment. The Board found that she was not dismissed in retaliation for filing such claims. Under authority of the Neunzig case, the Kansas Civil Rights Commission (KCCR) might indeed be without jurisdiction to entertain the same claim of retaliation. However, petitioner also filed her complaint with the Equal Employment Opportunity Commission (EEOC). Under deferral rules, EEOC need only wait 60 days

before proceeding under federal law. 42 U.S.C.S. §2000e-5(c). Thus if there was indeed any restriction on the jurisdiction of the KCCR's result of the Neunzig case, it did not affect her rights under Title VII of the Federal Civil Rights Act. Likewise, Mattox, which requires exhaustion of available administrative remedies before filing suit in Kansas courts, did not prevent her from pursuing her Title VII claim.

Plaintiff devotes several pages of her petition to remonstrances against the state judicial rulings that may have led her to appeal the Civil Service Board decision to the Shawnee County District Court. We do not know her reasons for doing so. However, when she decided to invoke

the Kansas courts to review the order of the Board with respect to her retaliation claim, she foreclosed, under the Kremer decision, her opportunity to relitigate that claim in federal court.

CONCLUSION

For the above reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



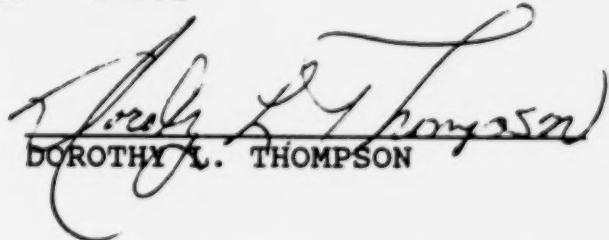
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CERTIFICATE OF SERVICE

I, Dorothy L. Thompson, hereby certify that I served three copies of

the foregoing Respondents Brief in
Opposition by depositing the same in
the U.S. mail, postage prepaid, this
12th day of September, 1990, addressed
to:

William E. Metcalf
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DOROTHY L. THOMPSON

A handwritten signature in black ink, appearing to read "Dorothy L. Thompson". Below the signature, the name "DOROTHY L. THOMPSON" is printed in a smaller, sans-serif font.